

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LVB-OGDEN MARKETING LLC,

Plaintiff,

v.

SHARON G. BINGHAM,

Defendant,

BANK OF THE WEST,

Garnishee.

No. 2:18-cv-00786-TSZ

***EX PARTE* MOTION TO STRIKE
DEFENDANT'S UNTIMELY CLAIM
FOR EXEMPTION**

NOTE ON MOTION CALENDAR:
December 7, 2018 (Same Day Motion)

1 Plaintiff LVB-Ogden Marketing LLC (“LVB”) unfortunately has no choice but to bring
 2 this motion, as Defendant Sharon Bingham—nearly *seven months too late*—has now served an
 3 exemption claim asserting that all the Fisher Trust accounts at issue in this proceeding should be
 4 treated as exempt from garnishment. *See* Ex. A. Defendant is belatedly attempting to trigger a
 5 statute requiring LVB to ask the Court for a hearing within 14 days, forcing LVB to file this
 6 motion. *See* RCW 6.27.160(2). But the very statute cited in her claim—and quoted in *capital*
 7 *letters in the claim she served*—makes clear that any exemption claim must be filed “not later
 8 than *twenty-eight days after the date stated on the writ.*” RCW 6.27.160(1); Ex. A. As the
 9 parties have already addressed in controversion briefing in May 2018, and again in summary
 10 judgment briefing in September 2018, she did not. ECF 6 at 7-8; ECF 32 at 8.

11 Indeed, the writ papers were issued on April 10, 2018 and served on the Bank and
 12 Defendant on April 12, 2018. ECF 2, 3, 5 ¶ 3. The Bank answered on May 7, 2018. ECF 4.
 13 Defendant’s claim for exemption was due twenty-eight (28) days after the writ was issued, on
 14 May 8, 2018, but Defendant served no response at all on that date, and certainly claimed no
 15 exemption on that date. RCW 6.27.160(1); ECF 6 at 5-8; ECF 32 at 8. Defendant therefore
 16 failed to timely claim any exemption, and has waived any exemption claim that could have been
 17 made. RCW 6.27.160(1). Nothing in the statute, or Washington law, permits a defendant to
 18 belatedly make this claim. *U.S. Fidelity & Guar. Co. v. Hollenshead*, 51 Wash. 326, 328 (1909)
 19 (“The right to claim property . . . specifically exempted by statute is a privilege, and will be
 20 waived unless asserted at the time and in the manner expressly or impliedly required by the
 21 law.”).¹ Accordingly, the Court can and should simply strike the claim as untimely.

22 Out of an abundance of caution, LVB has served an objection to the exemption claim
 23 (attached as Exhibit B), noting that the claim is untimely and defective, and reiterating again the
 24 points the Court already addressed in granting summary judgment. *See* ECF 40 at 7. Defendant’s
 25

26 ¹ In addition, there is no evidence that Defendant actually filed the “claim” with the Court as required by statute. RCW 6.27.160(1). It is therefore defective on that ground as well.

1 claim is little more than a thinly veiled attempt to reargue the Court's summary judgment order,
2 and burden the Court again with the same arguments that have already been presented and
3 disposed of. The Court should simply strike it as untimely. If the Court is not inclined to simply
4 strike the pleading as untimely in response to this motion, LVB would ask that the untimeliness of
5 Defendant's claim be addressed on an expedited briefing schedule. Likewise, if the Court
6 believes a hearing under RCW 6.27.160(2) is necessary, LVB would ask that any hearing be
7 limited to the untimeliness of Defendant's claim. LVB files this motion only out of an abundance
8 of caution, to comply with the statute Defendant is attempting to belatedly invoke.

9 DATED: December 7, 2018

10 *s/ William R. Squires III*

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service first-class mail the document to the following non CM/ECF participants:

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